REMARKS

Reconsideration and removal of the grounds for rejection are respectfully requested. Claims 1-6 were in the application, no claims have been amended. A complete set of the claims is provided above for convenience. The specification has been reviewed and amended to make a grammatical correction on page 6.

While claims 5 and 6 were considered allowable if placed in independent form, it was believed that claim 1 does sufficiently distinguish from the prior art, and so such an amendment was believed unnecessary, as discussed more fully below.

Claim 1 stands rejected under 35 USC 102 (e) for anticipation by US 7,006,511(Lanzafame et al).

To have anticipation, each and every element of the claim must be found in a single prior art reference W.L. Gore & Assoc. V. Garlock, Inc. 721 F.2d. 1540 (Fed. Cir. 1983). "Lack of novelty (often called 'anticipation') requires that the same invention, including each element and limitation of the claims, was known or used by others before it was invented by the patentee" Hoover Group, Inc. v. Custom Metalcraft, Inc., 66 F.3d 299, 302, 36 U.S.P.Q.2D (BNA) 1101, 1103 (Fed. Cir. 1995) (emphasis added)

Anticipation requires the reference to describe all the elements of the claims, arranged as in the patented device. Shearing v. Iolab Corp., 975 F.2d 1541, 1544-45, 24 U.S.P.Q.2D (BNA) 1133, 1136 (Fed. Cir. 1992); Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2D (BNA) 1913, 1920 (Fed. Cir 1989); Perkin-Elmer Corp. v. Computervision Corp., 732 F.2d 888, 894, 221 U.S.P.Q. (BNA) 669, 673 (Fed. Cir. 1984); C.R. Bard, Inc. v. M3 Sys., Inc., 157 F.3d 1340, 1349 (Fed. Cir., 1998).

Anticipation requires strict identity, without guessing what the reference discloses. Dayco Products, Inc. V. Total Containment Inc., 329 F.3d 1358 (Fed. Cir. 2003). A claim cannot be "anticipated" by prior art that does not have all of the limitations in the claim. Helifix Ltd. v. Blok-Lok, Ltd., 208 F.3d 1339, 1346 (Fed. Cir. 2000); SmithKline Beecham Corp. v. Apotex Corp., 439 F.3d 1312, 1324 (Fed. Cir.

2006).

Lanzafame et al was cited for disclosing:

> "a system and method of controlling a buffer for reducing jitter in a packet network, comprising: receiving packets into the buffer with a fast attack rate, and draining packets from the buffer with a slow decay rate (See Fig. 2; Col. 5, lines 39 plus). As shown in Fig. 5 which illustrates a flow diagram of a dynamic jitter buffering process, in which the jitter measurements in the inventive process are processed using a filter having *fast attack and slow decay characteristics* (adaptation control algorithm with fast attack and slow decay characteristics). Such a filter provides a "peak stretcher" function of the buffer (Col. 7, lines 18 plus). It's noted that, generally the fast attack and slow decay (acts as a controlled time constant filter) rapidly responds to an increase in signal amplitude and slowly decays the amplitude of the control signal in response to a decrease in input amplitude."

The passage of the '511 patent relied upon by the Examiner is as follows:

> As noted above, the present invention relates to determining an appropriate buffer size for the variable buffer 208 on a dynamic basis so as to minimize delay while also preventing packet overrun. More particularly, in the illustrative embodiment of the invention, a dynamic buffering process first computes a target for the jitter buffer by applying a filter having fast attack and slow decay characteristics to a set of one or more packet delay measurements.
>
> Advantageously, such a filter adapts quickly to changing network conditions and yet does not overreact to a deviation of a single packet. After the target size is computed, the process adjusts the jitter buffer size if necessary at a time that is determined to be "safe" based on an analysis of speech components of the received voice signal. As will be apparent from the description below, the overall process requires minimal computational resources and is therefore particularly well suited for use with devices or systems having limited processing power.

From a review of the above it is clear that there is no anticipation. In particular, the Examiner has not pointed to any disclosure of elements which perform the functions of "receiving packets into the buffer with a fast attack rate" or of "draining packets from the buffer with a slow decay rate". Rather, Lanzafame et al discloses only the use of a

filter to compute the target size of the jitter buffer (step 500), which calculate a "safe" time to make the buffer size adjustment (step 502) and then adjusts the buffer size (step 508), or not (step 506), on the basis of whether the current buffer size is outside the range of the target or within that range (step 504). The filter of Lanzafame et al is a fast attack, slow decay filter in the classical sense of the definition. Thus, Lanzafame et al uses a filter to compute the size of the buffer but does not disclose or suggest any regulation of the rate at which packets are added to or drained from the buffer. No such filter is involved in applicant's invention. Absent that element, claim 1 cannot be anticipated.

Claims 2-4 were rejected as being obvious over Lanzafame et al and further in view of Liu et al. However, claims 2-4 dependent from and contain all the limitations of claim 1 therein, including the specific rate regulation discussed above. Properly interpreting Lanzafame, the proposed combination would only lead one to use a filter to calculate buffer size, with no direction for the rate at which packets are added to or drained from the buffer, and absent a teaching or suggestion for doing as the applicant has done, claims 2-4 are believed to be patentable over the cited patents.

Based on the above amendments and remarks, favorable consideration and allowance of the application are respectfully requested. However should the examiner believe that direct contact with the applicants' attorney would advance the prosecution of the application, the examiner is invited to telephone the undersigned at the number given below.

Respectfully submitted,

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MARKED-UP COPY OF SPECIFICATION PARAGRAPHS

The following is the amended version of the paragraph beginning on page 5, the last two lines and extending to the first two lines of page 6:

The DequeueBuffer event (Figure 2C) governs the unloading of packets from the buffer. Following instantiation of the DequeueBuffer event (step 245), the data packets or dequeued from the buffer and count ~~is~~ are decremented accordingly (step 247).